

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

RAJENDRA SINGH, M.D.,

Plaintiff,

vs.

ALLEN MEMORIAL HOSPITAL
CORPORATION,

Defendant.

No. C04-2090

ORDER

This matter comes before the court pursuant to plaintiff Rajendra Singh's April 5, 2005, motion to amend complaint (docket number 6). The motion is granted.

Background

The plaintiff originally filed a complaint against defendant Allen Memorial Hospital Corporation on December 7, 2004. In his complaint, the plaintiff alleged that defendant discriminated against him on the basis of race and national origin, in violation of Title VII of the Civil Rights Act of 1991 and Chapter 216 of the Code of Iowa. The plaintiff did not request a jury trial in his complaint. The defendant filed its answer to the complaint on January 10, 2005. A scheduling order and discovery plan was entered on April 14, 2005, after the plaintiff filed the present motion to amend his complaint.

Conclusions of Law

The right to a jury trial in a civil case is not absolute and can be waived if the jury demand is not made in a timely fashion. Indiana Lumbermens Mut. Ins. Co. v. Timberland Pallet and Lumber Co., 195 F.3d 368, 374 (8th Cir. 1999). It is undisputed that, in the present case, the plaintiff did not make a timely demand for a jury trial under Federal Rule of Civil Procedure 38. However, the plaintiff asks the court to use its

discretionary power under Rule 39(b) to allow their claims to be tried to a jury despite the untimely demand.

Under Rule 39(b), “notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion may order a trial by a jury of any or all issues.” Fed. R. Civ. P. 39(b). “The Eighth Circuit has not articulated a legal standard under Rule 39(b).” Freeborn v. Mak, 270 F. Supp. 2d 1064, 1066 (S.D. Iowa 2003). However, other circuits have determined five factors that should be considered in the exercise of discretion under Rule 39(b). Id.

[T]he five factors for the Court to consider are:

- (1) whether the case involves issues which are best tried to a jury;
- (2) whether granting the motion would result in a disruption of the Court’s schedule or that of an adverse party;
- (3) the degree of prejudice to the adverse party;
- (4) the length of delay in having requested a jury trial; and
- (5) the reason for the movant’s tardiness in requesting a jury trial.

Id. at 1066-67 (citing Daniel International v. Fischbach and Moore Inc., 916 F.2d 1061, 1064 (5th Cir. 1990)). Another court has stated that

When the discretion of the court is invoked under Rule 39(b), the court should grant a jury trial in the absence of strong and compelling reasons to the contrary. A motion for trial by jury under this rule should be favorably received unless there are persuasive reasons to deny it. The above principles limit a district court’s discretion denying an untimely jury trial demand under Rule 39(b) because the right to jury trial is preserved by a constitutional amendment and the Seventh Amendment confers a fundamental right.

Credit Bureau of Council Bluffs, Inc. v. Credit Bureau Data Centers, Inc., 143 F.R.D. 206, 212 (S.D. Iowa 1992). Applying these principles, the court grants plaintiff’s motion.


First, the case involves issues best tried to a jury because it involves issues of employment discrimination. Freeborn, 270 F. Supp. 2d at 1067. Second, the courts

scheduling order was recently issued and granting the plaintiff's motion would not disrupt this order or that of the defendant in anyway. Third, the defendant admits it would not suffer any prejudice in seeking discovery and the court finds that defendant would not be adversely impacted by granting the plaintiff's motion because the trial in this case is scheduled for July 2006. Fourth, the plaintiff's delay in requesting a jury trial is approximately four months, which is not an excessively long period of time. Finally, the reasons for the plaintiff's tardiness is, as the plaintiff admits, mere inadvertence. While this factor may weigh against granting plaintiff's motion, it is not enough to outweigh the other four factors. Therefore, there are no strong and compelling reasons against allowing a jury trial.

Upon the foregoing,

It is ordered that plaintiff's motion to amend his complaint is granted.

April 22, 2005.



JOHN A. JARVEY
Magistrate Judge
UNITED STATES DISTRICT COURT